NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GENE MANINGER, Plaintiff - Appellant, v. HARTFORD INSURANCE COMPANY, Defendant - Appellee.	No. 04-15950 D.C. No. CV-03-02766-SBA MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Saundra B. Armstrong, District Judge, Presiding

Argued and Submitted December 8, 2005
San Francisco, California

Before: TROTT, T.G. NELSON, and PAEZ, Circuit Judges.

Plaintiff Gene Maninger appeals the district court's grant of summary judgment to Defendant Hartford Life Accident and Insurance Company in his ERISA action for continuing disability benefits. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

We conclude that the district court properly applied the abuse of discretion standard when it reviewed Hartford's decision. Maninger did not satisfy his burden of producing material, probative evidence that a serious conflict existed.[1] At most, he showed an "apparent" conflict.[2] Thus, although the court had to take Hartford's apparent conflict into account,[3] it properly reviewed for abuse of discretion.

The district court also properly held that Hartford did not abuse its discretion when it terminated Maninger's disability benefits. Although Dr. Linquist opined that Maninger was "probably not employable," other evidence in the record contradicted that opinion.[4] Collectively, Drs. Dionee and Zacharia's conclusions, the "functional capacity evaluation," and Hartford's "employability analysis

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[1] *See Nord v. Black & Decker Disability Plan*, 356 F.3d 1008, 1009–10 (9th Cir. 2004) (citing standard of review); *Alford v. DCH Group Long-Term Disability Plan*, 311 F.3d 955, 957 (9th Cir. 2002).

[2] *See Nord*, 356 F.3d at 1009–10.

[3] *Id.* at 1010.

[4] *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 834 (2003) (holding that "courts have no warrant to require administrators automatically to accord special weight to the opinions of a claimant's physician").

report" supported the decision that Maninger was no longer totally disabled. This evidence provided a reasonable basis for Hartford's decision.[5]

AFFIRMED.

[5] *Jordan v. Northup Grumman Corp. Welfare Benefit Plan*, 370 F.3d 869, 879–80 (9th Cir. 2004).